

MAR 23 2015

ORIGINAL

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

FILED

MAR 23 2015

CLERK

RECEIVED IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES TELECOM ASSOCIATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

15-1063

Case No. 15-_____

PROTECTIVE PETITION FOR REVIEW

Pursuant to 5 U.S.C. § 706, 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, and Federal Rule of Appellate Procedure 15(a), the United States Telecom Association (“USTelecom”) hereby petitions this Court for review of the order of the Federal Communications Commission (“FCC”) captioned *In re Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, FCC 15-24 (Mar. 12, 2015) (“Order”).

USTelecom is providing an electronic copy of the Order on compact disc with this petition.

Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

After this Court vacated and remanded the FCC’s previous attempt at Internet regulation in *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014), the FCC

initiated a rulemaking proceeding and ultimately issued the Order under review. Order ¶¶ 7, 10.

USTelecom seeks review of the Order on the grounds that it is arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; violates federal law, including, but not limited to, the Constitution, the Communications Act of 1934, as amended, and FCC regulations promulgated thereunder; conflicts with the notice-and-comment rulemaking requirements of 5 U.S.C. § 553; and is otherwise contrary to law.

USTelecom is filing this protective petition for review out of an abundance of caution. In particular, it files the petition in case the FCC's Order (or the Declaratory Ruling part of that Order) is construed to be final on the date it was issued (as opposed to after Federal Register publication, which USTelecom believes is the better view), and the ten-day period in which a party must file a petition for review to "avail itself of procedures established for selection of a court in the case of multiple appeals" – *i.e.*, the lottery procedures under 28 U.S.C. § 2112(a) – is likewise construed to begin on that date. 47 C.F.R. § 1.13(a)(1); *see also id.* § 1.13(a)(2).

Accordingly, to the extent that this protective petition for review is timely filed, USTelecom respectfully requests that this Court hold unlawful, vacate,

enjoin, and set aside the Order, and that it provide such additional relief as may be appropriate.

Dated: March 23, 2015

Respectfully submitted,



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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and this Court's Rule 26.1, USTelecom respectfully submits the following corporate disclosure statement. USTelecom states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

Dated: March 23, 2015

Respectfully submitted,

A handwritten signature in black ink, reading "Michael Kellogg", written over a horizontal line.

Michael K. Kellogg

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CERTIFICATE OF SERVICE

I hereby certify that, on March 23, 2015, I caused one copy of the foregoing Protective Petition for Review to be served on the following counsel by the manner indicated:

*By First Class Mail and
Electronic Mail*

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